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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 536

JOSEPH P. PETROWSKI, PETITIONER

v.

CLIFFORD C. NUTT, COLONEL, AIR CORPS, UNITED STATES ARMY, THE COMMANDING OFFICER, HAWAIIAN AIR DEPOT, HICKAM FIELD, T. H.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Ninth Circuit (R. 72–74) is reported at 161 F. 2d 938.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on May 28, 1947 (R. 74), and an order denying a petition for rehearing timely filed by petitioner was entered in that court on August 19, 1947 (R. 75). By order of Mr. Justice Douglas dated November 18, 1947, the time for filing a

petition for a writ of certiorari was extended to January 17, 1948 (R. 76). The petition was filed on January 17, 1948. The jurisdiction of this court is invoked "under Sections 344–350, Title 28, U. S. C. A., also Section 377 of Title 28, U. S. C. A., and Article III of the Constitution of the United States" (Pet. 2).

QUESTION PRESENTED

Whether the United States District Court for the Territory of Hawaii has jurisdiction of an original action in the nature of mandamus.

STATUTES INVOLVED

The provisions of the Hawaiian Organic Act and the Veterans' Preference Act which are involved are set forth in the Appendix, *infra*, pp. 7–8.

STATEMENT

This suit was instituted by petitioner in the United States District Court for the Territory of Hawaii, requesting the issuance of a writ in the nature of a writ of mandamus to respondent directing and commanding him to reinstate petitioner as a civilian employee of the United States Government at the Hawaiian Air Depot, Hickam Field, Oahu, Territory of Hawaii, or to show cause why such reinstatement should not be made (R. 4–10). The allegations of the complaint may be summarized substantially as follows: On September 6, 1944, petitioner, an honor-

ably discharged veteran who had been employed for two years theretofore as a property and supply clerk at the Hawaiian Air Depot, was charged with misconduct, and action was taken to effect his removal from the Government service for that cause (R. 5–6, 11–13). Petitioner was given 30 days to reply to the charges, and, on September 7, was notified of a 30-day suspension, pending action thereon (R. 6, 13–15). When petitioner challenged the propriety of the steps taken and insisted on reporting for work as usual, he was forcibly removed by the military police (R. 7, 15–17). Thereafter, on September 19, 1944, petitioner filed a reply to the charges lodged against him, contending that the action taken was not in accordance with the applicable provisions of the Veterans' Preference Act (Act of June 27, 1944, c. 287, 58 Stat. 387, 5 U. S. C., Supp. V, 851–869), as amended August 4, 1947, c. 447 (Public Law 325, 80th Cong., 1st sess.), and that the charges were not, in any event, justified by the facts (R. 7–8, 17–27). This reply, however, was deemed unsatisfactory, and on October 9, 1944, petitioner was removed from his position (R. 8, 29). On the same day, a notice of the discharge was sent to the United States Civil Service Commission, which was advised that there would be objection to petitioner's reappointment to the Federal service (R. 27–28). Petitioner thereupon appealed to the United States Civil Service Commission on October 19, 1944, and was

advised that his case would be investigated and the recommendations of the Commission forwarded to the Commanding Officer at the Hawaiian Air Depot, but that such recommendations were only of an advisory character, and the Commission, in no event, had authority to force petitioner's reemployment (R. 34–37).[1]

Respondent having filed a motion to dismiss (R. 30–33), the district court, after hearing, filed its "Decision" (R. 38–49) and, on April 20, 1945, entered an order dismissing the complaint for lack of jurisdiction (R. 49–50). A petition for rehearing was denied, the district court reiterating its view that it was without jurisdiction to issue a writ of mandamus (R. 62). On appeal to the United States Circuit Court of Appeals for the Ninth Circuit, the judgment of the district court was affirmed (R. 74).

ARGUMENT

This case is an original proceeding requesting relief in the nature of a writ of mandamus. It is too well settled to require extended discussion here that federal district courts have no jurisdiction over such actions, mandamus being available solely as ancillary relief and only in cases "wherein jurisdiction has been acquired by other

[1] The Act of August 4, 1947, c. 447 (Public Law 325, 80th Cong., 1st sess.), thereafter enacted, has so amended the Veterans' Preference Act as now to make it mandatory on administrative officers "to take such corrective action as the Commission finally recommends."

means and by other process" (*Covington & Cincinnati Bridge Co.* v. *Hager,* 203 U. S. 109, 110; *Knapp* v. *Lake Shore & M. S. R. Co.,* 197 U. S. 536; *Insular Police Commission* v. *Lopez,* 160 F. 2d 673 (C. C. A. 1), certiorari denied, 331 U. S. 855; *Ballf* v. *Kranz,* 82 F. 2d 315 (C. C. A. 9), certiorari denied, 299 U. S. 549; *Amchanitzky* v. *Sinnott,* 69 F. 2d 97 (C. C. A. 2), certiorari denied, 292 U. S. 636), which is not the case here. The United States District Court for the Territory of Hawaii is subject to the same jurisdictional limitations, for, in establishing that court, Congress directed that it "shall have the jurisdiction of district courts of the United States, and shall proceed therein in the same manner as a district court" (Hawaiian Organic Act, Act of April 30, 1900, c. 339, § 86, 31 Stat. 158; as amended March 3, 1909, c. 269, § 1, 35 Stat. 838; March 3, 1911, c. 231, § 291, 36 Stat. 1167; July 9, 1921, c. 42, § 313, 42 Stat. 119; 48 U. S. C. 642).[2] Only recently, in *Insular Police Commission* v. *Lopez,*

[2] Jurisdiction beyond that exercised by federal district courts is, of course, present where the particular court, in addition to its status as a district court of the United States, has been vested by statute with general local jurisdiction; thus, the courts of the District of Columbia (*Kendall* v. *United States,* 12 Pet. 524; *Arant* v. *Lane,* 249 U. S. 367, 371) and of Alaska (Act of June 6, 1900, c. 786, § 4, 31 Stat. 322; as amended March 3, 1909, c. 269, § 2, 35 Stat. 839; March 2, 1921, c. 110, 41 Stat. 1203; December 13, 1926, c. 6, § 1, 44 Stat. 919; 48 U. S. C. 101). No such special jurisdiction has been conferred on the District Court for the Territory of Hawaii.

supra, when the First Circuit Court of Appeals announced a similar holding with respect to the similarly constituted district court for Puerto Rico, this Court denied certiorari. 331 U. S. 855 (June 16, 1947).

CONCLUSION

The decision of the court below correctly applies a well settled rule of law. There is no conflict of decisions. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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FEBRUARY 1948.

APPENDIX

1. The Hawaiian Organic Act (Act of April 30, 1900, c. 339, § 86, 31 Stat. 158; as amended March 3, 1909, c. 269, § 1, 35 Stat. 838; March 3, 1911, c. 231, § 291, 36 Stat. 1167; July 9, 1921, c. 42, § 313, 42 Stat. 119; 48 U. S. C. 642), as it appears in the Code, reads, in pertinent part, as follows:

> The said court shall have the jurisdiction of district courts of the United States, and shall proceed therein in the same manner as a district court; and the said judges, district attorney, and marshal shall have and exercise in the Territory of Hawaii all the powers conferred by the laws of the United States upon the judges, district attorneys, and marshals of district courts of the United States.

2. The Veterans' Preference Act (Act of June 27, 1944, c. 287, 58 Stat. 387 (5 U. S. C., Supp. V, 863); as amended August 4, 1947, c. 447 (Public Law 325, 80th Cong., 1st sess.) reads, in pertinent part, as follows:

> SEC. 14. No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension

for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specificially and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: *Provided,* That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of the same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such corrective action as the Commission finally recommends: *Provided further,* That the Civil Service Commission may declare any such preference eligible who may have been dismissed or furloughed without pay to be eligible for the provisions of section 15 hereof.

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